



**UNITED STATES OF AMERICA  
DEPARTMENT OF TRANSPORTATION  
OFFICE OF THE SECRETARY  
WASHINGTON, D.C.**

Issued by the Department of Transportation  
on the 11th day of January, 1996

SERVED JAN 22

Ninety-day notice of intent of Air Midwest  
to suspend essential air service at

**TOPEKA, KANSAS**

under 49 U.S.C. 41731 *et seq.*

**Docket 49505**

**ORDER SELECTING CARRIER  
AND ESTABLISHING FINAL SUBSIDY RATE**

**Summary**

By this order we are reselecting Air Midwest, Inc., d/b/a USAir Express, to provide subsidized service at Topeka, Kansas, at an annual subsidy rate of \$102,362 for an additional two-year period beginning November 27, 1995, and continuing through December 27, 1997.

**Background**

By Order 95-7-4, issued on July 22, 1994, the Department requested proposals, with subsidy requests if necessary, from carriers interested in providing essential air service at Topeka, Kansas.<sup>1</sup> Our request was prompted by Air Midwest's filing, on April 18, 1995, of a 90-day notice of its intent to terminate its subsidized service at Topeka stating that its current rate was inadequate. Air Midwest had been selected to provide four nonstop round trips to Kansas City each weekday and weekend, with 19-seat Beech 1900 aircraft, at an annual subsidy rate of \$47,788 when it filed its suspension notice.

In requesting proposals for replacement essential air service, we stated that we were prepared to consider service proposals providing three or four nonstop round trips a day with 15- to 19-seat aircraft to Kansas City or two nonstop round trips a day with larger aircraft. Since we issued our request for proposals, Congress appropriated \$22.6 million for the

---

<sup>1</sup> See Appendix A for a map.

essential air service program for fiscal year 1996, representing a one-third reduction from the previous

- 2 -

year's appropriation of \$33.4 million. As discussed in more detail in Order 95-11-28, November 17, 1995, the Department has sufficient funds to subsidize only two round trips a day, five days a week, to one hub for every subsidized community. In this case, Topeka is limited to only two round trips a day, five days a week, to Kansas City. Order 95-11-28 established a revised temporary subsidy rate of \$25,487 per year for Air Midwest's service at Topeka consisting of two nonstop round trips, five days a week, to Kansas City. Because Air Midwest filed a 90-day notice to suspend its subsidized essential air service at Topeka before the Department issued Order 95-11-28, the carrier is eligible to receive a higher rate under U.S.C. 41734(d) 180 days after filing its notice. We have negotiated a new higher subsidy rate with the carrier as explained below.

### **Carrier Proposal**

Air Midwest filed the only proposal in response to Order 95-7-4. As a result of informal rate discussions held between Air Midwest and the Department staff, the carrier has agreed to an annual subsidy rate of \$102,362 to provide two nonstop round trips, five days a week, between Topeka and Kansas City with 19-seat Beech 1900 aircraft for an additional two-year rate term.<sup>2</sup>

### **Decision**

After reviewing Air Midwest's proposal, we have decided to reselect Air Midwest to provide subsidized service at Topeka for the two-year period beginning November 27, 1995. Air Midwest is the sole applicant, has proposed service that is consistent with the level of service that we are able to subsidize under the fiscal year 1996 appropriation, and the carrier's performance continues to be reliable. The carrier's subsidy requirement of \$102,362 per year appears reasonable for the service to be provided.

49 U.S.C. 41734(d) stipulates that a carrier that is already receiving subsidy for essential air service, and is required by a Department order to maintain service after having filed a 90-day notice to terminate such service, shall remain on the same subsidy rate either until replacement service begins or until 90 days beyond the end of the 90-day notice period -- i.e., 180 days after it filed notice.<sup>3</sup> Air Midwest's 180-day period ended on October 14, 1995. Consequently, Air Midwest is eligible for a revised subsidy rate as of October 15, 1995. However, as we mentioned earlier, the Department was compelled to implement across-the-board subsidy cuts effective November 27. The carrier has agreed to the same

---

<sup>2</sup> Appendix B contains details of Air Midwest's compensation requirements.

<sup>3</sup> 49 U.S.C. 41734(d) was formerly section 419(b)(6) of the Federal Aviation Act of 1958. P.L. 103-272, July 1994, codified the Federal Aviation Act within Subtitle VII of Title 49, United States Code (Transportation).

subsidy rate per flight operated in the six-week period from October 15 through November 26 as for the prospective two-year rate of \$102,362.

### **Carrier Fitness**

49 U.S.C. 41737(b) and 41738 require that we find a carrier fit, willing and able to provide service reliably before we may compensate it for essential air service. We last found Air Midwest to be fit to provide scheduled passenger service as a commuter air carrier by Order 94-10-44, issued on October 27, 1994. Air Midwest remains subject to the Department's continuing fitness monitoring, and we have found no information that would lead us to believe that the carrier has failed to meet the continuing fitness requirement. Air Midwest continues to possess a favorable compliance disposition. The Federal Aviation Administration has advised us that the carrier is conducting its operations in accordance with 14 CFR Part 135, and knows of no reason why we should not find that Air Midwest remains fit.

This order is issued under authority delegated in 49 CFR 1.56(i).

### **ACCORDINGLY,**

1. The Department reselects Air Midwest, Inc., d/b/a USAir Express, to provide essential air service at Topeka, Kansas, as described in Appendix C, for the period beginning on November 27, 1995, and continuing through December 27, 1997;
2. The Department sets the final rate of compensation for Air Midwest, Inc., d/b/a USAir Express, for the provision of essential air service at Topeka, Kansas, from October 15, 1995, through November 26, 1995, at \$245,547 per year, as described in Appendix C, payable as follows: for calendar months during which essential air service is provided, the amount of compensation shall be subject to the ceiling per service day of \$800.48 and shall be determined by multiplying the subsidy-eligible departures and arrivals completed during the month, assuming a 19-passenger seat Beech 1900 aircraft, by \$100.06 per departure;<sup>4</sup>
3. The Department sets the final rate of compensation for Air Midwest, Inc., d/b/a USAir Express, for the provision of essential air service at Topeka, Kansas, as described in Appendix C, for the period beginning November 27, 1995, and continuing through December 27, 1997, payable as follows: for each calendar month during which essential air service is provided, the amount of compensation shall be subject to the ceiling set forth in Appendix C, and shall be determined by multiplying the subsidy-eligible departures and arrivals completed during the month<sup>5</sup> by \$100.06;<sup>6</sup>

---

<sup>4</sup> See Appendix C for calculations.

<sup>5</sup> If the carrier reports a significant number of aircraft substitutions, with less than 19 passenger seats per flight, a revision of this subsidy rate may be required.

<sup>6</sup> See Appendix C for calculation of the subsidy rate per arrival/departure.

4. The rates established in ordering paragraphs 2 and 3 above are in lieu of, not in addition to, the rate of compensation for Topeka established by Order 95-11-28;
5. The Department directs Air Midwest, Inc., d/b/a USAir Express, to retain all books, records, and other summary and source documentation to support claims for compensation for service the carrier is required to provide, and to preserve and maintain such documentation in a manner that readily permits its audit and examination by representatives of the Department. Such documentation shall be retained for seven years, or until the Department indicates that the records may be destroyed or an audit has been completed. Copies of flight logs for aircraft sold or disposed of must be retained. The carrier may forfeit its compensation for any claim that is not supported under the terms of this order;
6. Subsidy payments under this order are subject to the availability of funds. If the Department terminates payments because of insufficient appropriated funds, then, at the end of the period for which the Department does make payments, the carrier may suspend the service provided for by this order without regard to any requirement for notice of such suspension;
7. The Department finds that Air Midwest, Inc., d/b/a USAir Express, continues to be fit, willing and able to operate as a commuter carrier and capable of providing essential air service at Topeka, Kansas; and
8. The Department will serve a copy of this order on the Mayor and airport manager of Topeka, Kansas, the Governor of Kansas, the Kansas Department of Transportation, and Air Midwest, Inc., d/b/a USAir Express.

By:

**MARK L. GERCHICK**  
Acting Assistant Secretary for Aviation  
and International Affairs

(SEAL)

## TOPEKA, KANSAS, AND THE SURROUNDING REGION

AIR MIDWEST, INC., d/b/a USAIR EXPRESS  
ESSENTIAL AIR SERVICE TO BE MAINTAINED AT  
TOPEKA, KANSAS

---

EFFECTIVE PERIOD	October 15, 1995, and continuing through November 26, 1995
------------------	--

---

SERVICE	To Kansas City, Missouri (55 nonstop air miles)
---------	---

---

MINIMUM FREQUENCY	Four round trips six days a week
-------------------	----------------------------------

---

STOPS ALLOWED	None
---------------	------

---

UPLINE SERVICE	Permitted
----------------	-----------

---

AIRCRAFT TYPE	Beech 1900 (19 passenger seats)
---------------	---------------------------------

---

MINIMUM NO. OF SEATS TO BE AVAILABLE DAILY IN EACH DIRECTION	38 each service day, less preemption
--	--------------------------------------

---

MINIMUM NO. OF PILOTS	Two
-----------------------	-----

---

TIMING OF FLIGHTS	Flights must be well-timed and well-spaced to ensure full compensation
-------------------	--

---

RATE PER DEPARTURE AND ARRIVAL	\$100.06 <sup>1</sup>
--------------------------------	-----------------------

---

WEEKLY CEILING	\$4,802.88 <sup>2</sup>
----------------	-------------------------

---

---

<sup>1</sup> Same rate per flight as for the future period. See page 3 of this Appendix.

<sup>2</sup> The subsidy rate per arrival/departure times 48 scheduled subsidy-eligible departures and arrivals each week.

DAILY CEILING

\$800.48<sup>3</sup>

---

---

---

<sup>3</sup> Eight departures per day times \$100.06.

## N O T E

The carrier has been notified that it may forfeit its compensation for any flights that it does not operate in full conformance with the terms and stipulations of this order, including the service plan outlined in this order and any other significant elements of the required service, without prior approval. It has been informed that an aircraft take-off and landing at its scheduled destination constitutes a completed flight, and that, absent an explanation supporting subsidy-eligibility for a flight that has not been completed, such as certain weather cancellations, only completed flights are eligible for subsidy. The carrier may jeopardize its entire subsidy claim for the period in question if, for a significant period of time, it does not schedule or operate its flights in full conformance with this order. In addition, should circumstances warrant, the Department may locate and select a replacement carrier to provide service on the route. If the carrier contemplates any changes beyond the scope of this order during the applicable period of this rate, it must first notify the Office of Aviation Analysis in writing and receive written approval from the Department to be assured full compensation. The carrier must complete all flights that can be safely operated; flights that overfly subsidized points for lack of traffic will not be compensated. In determining whether subsidy payment for a deviating flight should be adjusted or disallowed, the Department will consider the extent to which the goals of the program are met and the extent of access to the national air transportation system provided to the community.



AIR MIDWEST, INC., d/b/a USAIR EXPRESS  
ESSENTIAL AIR SERVICE TO BE MAINTAINED AT  
TOPEKA, KANSAS

EFFECTIVE PERIOD	November 27, 1995, and continuing through December 27, 1997
SERVICE	To Kansas City, Missouri (55 nonstop air miles)
MINIMUM FREQUENCY	Two round trips five days a week
STOPS ALLOWED	None
UPLINE SERVICE	Permitted
AIRCRAFT TYPE	Beech 1900 (19 passenger seats)
MINIMUM NO. OF SEATS TO BE AVAILABLE DAILY IN EACH DIRECTION	38 each service day, less preemption
MINIMUM NO. OF PILOTS	Two
TIMING OF FLIGHTS	Flights must be well-timed and well-spaced to ensure full compensation
ANNUAL COMPENSATION	\$102,362
RATE PER DEPARTURE AND ARRIVAL	\$100.06 <sup>1</sup>

<sup>1</sup> Topeka is scheduled to receive two departures to Kansas City and two arrivals from Kansas City five days a week. Annual compensation of \$102,362 divided by the number of flights scheduled annually calculated by multiplying 4 arrivals/departures per service day times 261 service days times 0.98 completion factor: \$102,362/1,023=\$100.06.

WEEKLY CEILING

\$2,001.20<sup>2</sup>

---

---

<sup>2</sup> The subsidy rate per arrival/departure times 20 scheduled subsidy-eligible departures and arrivals each week.

## N O T E

The carrier has been notified that it may forfeit its compensation for any flights that it does not operate in full conformance with the terms and stipulations of this order, including the service plan outlined in this order and any other significant elements of the required service, without prior approval. It has been informed that an aircraft take-off and landing at its scheduled destination constitutes a completed flight, and that, absent an explanation supporting subsidy-eligibility for a flight that has not been completed, such as certain weather cancellations, only completed flights are eligible for subsidy. The carrier may jeopardize its entire subsidy claim for the period in question if, for a significant period of time, it does not schedule or operate its flights in full conformance with this order. In addition, should circumstances warrant, the Department may locate and select a replacement carrier to provide service on the route. If the carrier contemplates any changes beyond the scope of this order during the applicable period of this rate, it must first notify the Office of Aviation Analysis in writing and receive written approval from the Department to be assured full compensation. The carrier must complete all flights that can be safely operated; flights that overfly subsidized points for lack of traffic will not be compensated. In determining whether subsidy payment for a deviating flight should be adjusted or disallowed, the Department will consider the extent to which the goals of the program are met and the extent of access to the national air transportation system provided to the community.

